Popular Book Co Pte Ltd v Sea Sun Furnishing (Pte) Ltd

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 1215 OF 1990
CHAN SEK KEONG J
8 MARCH 1991

Landlord and Tenant — Option to renew lease — Construction of clause — Whether rent to be determined by the landlord under the clause to be a fair and reasonable rent

The plaintiffs were tenants of two units of shop premises of which the defendants were the landlords. The defendants' predecessors in title had executed a lease ('the lease') for three years in favour of the plaintiffs and the rent was $14,364 payable quarterly.

Clause 4(6) of the lease provided as follows:

'The landlord shall ... grant to the tenant a further term of the demised premises ... The renewed term be for a period of three [3] years commencing from the date immediately following the expiration of the term hereby created, at a revised rent to be determined by the landlord and upon terms and conditions as shall be imposed by the landlord. ... In the event that the revised rent, terms and conditions are not acceptable to the tenant ... the landlord shall be free of all obligations whatsoever to grant to the tenant any further term.'

The defendants were prepared to renew the lease for a further term of three years at a rent of $28,728 payable quarterly. The plaintiffs rejected the offer on the ground that the rent was unconscionable and far in excess of the market rate. The plaintiffs brought this originating summons for construction of cl 4(6) of the lease, and the determination of the following questions:

(i) whether it was implied in cl 4(6) and/or the terms of the lease that the revised rent to be determined by the landlord was to be a fair and reasonable rent;
(ii) if so, if the plaintiffs and the defendants failed to agree as to what was a fair and reasonable rent, whether the revised rent was to be fixed by a single independent arbitrator; and
(iii) if so, in fixing the revised rent, whether the arbitrator should fix a reasonable rent or one assessed objectively.

Held, answering the questions in the negative:

(1) It was not implied by cl 4(6) and/or the terms of the lease that the revised rent to be determined by the defendants was to be a fair and reasonable rent and therefore the answer to the first question posed by the plaintiffs was 'no'.

(2) The present action was not concerned with the construction of a rent review clause simpliciter but the construction of a lease renewal clause. Unlike the leases in the English cases cited, the lease was a short term lease and cl 4(6) of the lease was not simply an option to have the rent fixed for an existing term.

(3) Clause 4(6) was an agreement to agree to a new lease at a rent to be agreed between the parties, and applying the well established principle that if there was no agreement on what was to be agreed, there was no obligation on the part of the landlord to grant a new lease or an obligation on the part of the tenant to accept it.

(4) The court would give effect to the clear meaning of cl 4(6). There was nothing in cl 4(6) which would give rise to any implication that the rent must be reasonable or that it must be determined by someone else. The fact that a lease was of a commercial nature did not imply that the revised rent should be market rent or any other reasonable rent. In addition, the language of cl 4(6) made it clear by stating that if the rent was not acceptable to the tenant and/or the tenant shall fail to sign the renewed lease, the option would lapse.

Cases referred to

1 *Thomas Bates & Son Ltd* v *Wyndham's (Lingerie) Ltd* [1981] 1 All ER 1077 (distd)
2 *Ponsford* v *HMS Aerosols Ltd* [1978] 2 All ER 837 (distd)
3 *Beer* v *Bowden* [1981] 1 All ER 1070 (distd)
4 *F & G Sykes (Wessex) Ltd* v *Fine Fare Ltd* [1967] 1 Lloyd's Rep 53 (distd)
5 *Sudbrook Trading Estate Ltd* v *Eggleton* [1983] 1 AC 444 (distd)
6 *Lear* v *Blizzard* [1983] 3 All ER 662 (distd)
7 *May & Butcher Ltd* v *The King (Note)* [1934] 2 KB 17 (distd)

Shantini Ramachandra for the plaintiffs.
Lim Yong for the defendants.

Cur Adv Vult

Chan Sek Keong J: This is a summons for construction of cl 4(6) of a lease dated 10 March 1988 made between the plaintiffs as tenants and the defendants' predecessors in title, viz Thomson Plaza (Pte) Ltd as landlords in respect of two units of shop premises ('the premises') in Thomson Plaza. The term of the lease ('the lease') was for three years commencing from 15 March 1988 at the rent of $14,364 payable quarterly.

On 21 September 1990, the defendants became the owners of the premises. On 26 September 1990, the plaintiffs wrote to the defendants and requested the renewal of their lease for a further term of three years. The request was made under cl 4(6) of the lease which provides as follows:

> The landlord shall at the written request of the tenant, made not less than six (6) months before the expiration of the term hereby created and if there shall not at the time of such request be any existing breach or non-observance of any of the covenants on the part of the tenant herein contained and at the tenant's expense grant to the tenant a further term of the demised premises the lease for which must be signed by the tenant at a date not less than two (2) weeks before the expiration of the term hereby created. The renewed term be for a period of three (3) years commencing from the date immediately following the expiration of the term hereby created, at a revised rent to be determined by the landlord and upon terms and conditions as shall be imposed by the landlord. Provided always that within two (2) weeks of the receipt of the landlord's notification of the revised rent, terms and conditions, the tenant shall in writing inform the landlord whether the revised rent, terms and conditions are acceptable or otherwise. In the event that the revised rent, terms and conditions are not acceptable to the tenant and/or if the tenant shall fail to sign the lease for the renewed term by the date stipulated above then this option shall lapse and the landlord shall be free of all obligations whatsoever to grant to the tenant any further term.

On 2 October 1990, the plaintiffs were informed by the defendants' solicitors that their clients were prepared to renew the lease for a further term of three years at a rent of $28,728 payable quarterly. This offer was confirmed in a notification given under cl 4(6) on 16 October 1990. The plaintiffs rejected the notification on the ground that the rent was unconscionable and far in excess of the market rate.

In this action, the plaintiffs have sought the determination of the following questions:

1(a) whether upon the true construction of cl 4(6) of the lease of the premises at Units #03-17 and #03-18 Thomson Plaza 301 Upper Thomson Road, Singapore dated 10 March 1988 and made between the defendants' predecessors in title, Thomson Plaza (Pte) Ltd and the plaintiffs and/or by terms implied in the lease the revised rent determined by the landlord was to be a fair and reasonable rent, and

(b) if so, whether in default of agreement between the plaintiffs and the defendants of what is fair and reasonable rent, the revised rent was to be fixed by a single independent arbitrator, and

(c) whether in fixing the revised rent, the arbitrator should fix a rent which it would be reasonable for the parties to agree or a rent assessed objectively on the basis of the open market rent at which the said premises might reasonably be expected to be let or a rent assessed on some other basis.

Counsel for the plaintiffs has submitted that there are three types of options for renewal of leases: (1) where there is no formula for quantifying the rent and no machinery to determine it; (2) where there is a stated formula but no effective machinery; and (3) where both the formula and the machinery are provided. She says that the option to renew in the lease is of the first type.

With regard to the law, she says that the authorities now support the proposition that in the absence of a formula and machinery, the court will imply a term that the rent is a reasonable rent and stipulate the appropriate machinery to determine the reasonable rent. In this context, reasonable rent means the market rent. She refers to *Thomas Bates & Son Ltd* v *Wyndham's (Lingerie) Ltd*[1] as authority for this submission. She also referred to the following cases: *Ponsford* v *HMS Aerosols Ltd*;[2] *Beer* v *Bowden*;[3] *F & G Sykes (Wessex) Ltd* v *Fine Far Ltd*;[4] *Sudbrook Trading Estate Ltd* v *Eggleton*;[5] and *Lear* v *Blizzard*.[6]

For the purpose of this action, I need only examine one authority. In the case of *Thomas Bates*,[1] the original renewal clause stipulated that the new rent shall be:

> at a rent to be agreed between the lessor and the lessee but in default of such agreement at a rent to be fixed by a single arbitrator appointed by the president for the time being of the Royal Institution of Chartered Surveyors and containing the like covenants and provisos as are herein contained.

The lease was renewed in 1970 for a term of 14 years at an agreed rent for five years,

> and the next period of five years of the said term and the final period of four years of the said term such rents as shall have been agreed between the lessor and the lessee ...

It is to be noted that the reddendum omitted the reference to the fixing of the rent by an arbitrator in default of agreement. When the lessors sought in 1975 to review the rent for the next period of five years by an arbitrator, the lessees disagreed, they having been advised that the rent review clause was unenforceable for lack of machinery to fix the rent and, in consequence the rent would remain the same until the lease expired.

The lessees commenced an action claiming (i) a declaration that the rent payable on the rent review was to be the market rent for the premises and (ii) rectification of the rent review clause to provide for determination of the review of rent in default of agreement. The Court of Appeal unanimously held that the lessees were entitled to rectification.

Counsel did not rely on the terms of the review clause as rectified but on the following passage from the judgment of Buckley LJ (at p 1088):

> If I were wrong on the point of rectification, then, on construction and by a process of implication, the rent to be ascertained in default of agreement must, I think, be a fair rent as between the landlords and the tenants. It would be most unjust that the landlords should receive no rent because of failure of the parties to agree. The landlords have granted a 14-year term and the court must endeavour to fill any gap in the terms of the lease by means of a fair and reasonable implication as to what the parties must have intended their bargain to be. See in this connection the decision of this court in *F & G Sykes (Wessex) Ltd* v *Fine Fare Ltd* [1967] 1 Lloyd's Rep 53, which was a case very different on its facts from the present, but in which the court explained the function of any court of construction where parties have embarked on any commercial relationship but under terms that are not altogether adequate to cover the eventualities. The court would ascertain by inquiry what rent the landlord and the tenant, as willing negotiators anxious to reach agreement, would arrive at for each of the two rent review periods. In short, the standard would be the same, as I see it, as would have to be adopted by an arbitrator under the clause if it is rectified in the way in which I consider that it should be rectified.

Counsel's submission is that Buckley LJ held that the words 'to be agreed' would still be given effect to even though the parties could not agree on the rent by an inquiry. So here, the court can and should give effect to cl 4(6) of the lease in like manner even though the plaintiffs could not accept the rent demanded by the defendants for the new lease.

All the cases cited by counsel are rent review cases, ie cases where it is necessary for the landlords to fix the

rent for the next tranche of the remaining term of the lease. These cases considered one or more of the following: whether there was a formula for fixing the rent, what was the formula and who (the machinery) was to determine the rent, applying the formula. If there was a formula, but no machinery or the machinery had broken down (for whatever reason) the court would provide the machinery in order to give effect to the intention of the parties. If there was no formula provided, or the formula was unworkable, the consequence might be that the existing rent would continue or it be something else. However, in the case of *Thomas Bates*,[1] even counsel for the lessees found it impossible to argue that no rent was payable because the lessees could not agree with the lessors: see Buckley LJ at p 1083. In each of these cases, the commercial nature of the lease was relevant in ascertaining the intention of the parties.

The lease in the present case may be said to be a commercial lease. But it is a short term lease, unlike the leases in the English cases. The option to renew in the lease is not simply an option to have the rent fixed for an existing term. It is merely an option to accept a new lease on a new rent to be determined by the defendants. The rent has to be agreed for each new term that the tenant may require. It is an essential term of any new lease. Therefore the present action is not concerned with a rent review clause simpliciter but with a lease renewal clause. Clause 4(6) is an agreement to agree to a new lease at a rent to be agreed between the parties. The established principle in such a situation is that if there is no agreement on what is to be agreed, there is no obligation on the part of the landlords to grant a new lease or an obligation on the part of the tenant to accept it. The rule applied by the House of Lords in *May & Butcher Ltd* v *The King (Note)*[7] has not been overruled and is still good law.

The alternative ground given by Buckley LJ in the *Thomas Bates* case[1] (which was not expressly adopted by the other members of the court) has to be understood in the context of that case. The court had to determine how the rent for the next period should be determined and not whether there was a next period. All the cases cited by counsel for the plaintiff are concerned with that type of question. Furthermore, Buckley LJ's alternative ground was not based on any principle but on the construction of the particular clause. He expressly said that his construction was reached by a process of implication.

In the present case, cl 4(6) says that the new term shall 'be for ... three years ... at a revised rent to be determined by the landlord. ...' The defendants have determined the revised rent. There is nothing in those words which give rise to any implication that the rent must be reasonable or that it is the market rent or that it is to be determined by someone else. The fact that the lease is of a commercial nature does not imply that the revised rent should be the market rent or any other reasonable rent. Clause 4(6) goes on to say that if 'the revised rent..[is] not acceptable to the tenant and/or if the tenant shall fail to sign the lease ... then this option shall lapse ...' These words are clear beyond doubt. The plaintiffs have not accepted the revised rent and have not signed the lease. There is nothing more to be said for the plaintiffs. I must give effect to the clear meaning of cl 4(6).

Accordingly, the answer to question 1(a) of this summons is 'no'. The plaintiffs will pay the costs of the defendants in this application.

Application dismissed.

Solicitors: *Wee Ramayah & Partners; Lim Hua Yong.*

Reported by *Teoh Ai Lin*

Wright v Times Business Publications Ltd & Anor

HIGH COURT (SINGAPORE) — SUIT NO 98 OF 1988
KARTHIGESU J
25 JANUARY 1991

Civil Procedure — Summons for directions — Discovery — Relevancy of documents — Application refused in related proceedings — Relevancy tested by pleadings — Related better further and better particulars of defence — Interrogatories — Rules of the Supreme Court 1970, O 24 rr 3 & 7

Tort — Defamation — Defences — Denial — Qualified privilege and justification

Words and Phrases — 'Unfounded'

In 1987, *Business Times* ('BT') published articles regarding OCBC's attempts to recruit four top bankers and methods of recruiting executives. Norman Wright ('NW') subsequently in a letter addressed to the editor of BT, responded to the aforementioned articles and concluded that 'there is a prima facie case of amateurism or carelessness of OCBC to have allowed such a breach of confidentiality to happen'. OCBC contended that the words were libellous and demanded an apology. BT printed an unreserved apology that NW's allegations were 'unfounded'. NW refused to apologize and OCBC commenced proceedings against NW ('1987 proceedings'). NW alleged that the words in the apology were libellous and meant that NW had made statements which were wholly unfounded and without basis and by innuendo that he was 'irresponsible, reckless and given to making statements which are wholly unfounded and without any basis'. OCBC refused to apologize and NW commenced these proceedings against OCBC and BT ('1988 proceedings'). OCBC's defences were that the words complained of could not bear the meanings claimed by NW, qualified privilege and justification.

NW requested for further and better particulars of OCBC's defence and discovery of all correspondence and memoranda of discussion, relating to the BT article and the persons named,